

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1831 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PANNALAL BHANVARLAL SUTHAR

Versus

GENERAL MANAGER

Appearance:

MR SUNIL K SHAH for Petitioner
MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/04/2000

ORAL JUDGEMENT

The petitioner has filed this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 challenging the order dated 7.9.1999 recorded by the learned Motor Accident Claim Tribunal (Auxilliary) below application Exh.3 in Motor Accident Claim Petition No.1509/98 whereby the learned Tribunal

dismissed the aforesaid application of the petitioner under Section 140 of the Motor Vehicles Act, holding that the petitioner had not suffered permanent partial disablement.

2. I have heard learned Advocates for the parties and have perused the papers. The learned Tribunal has observed that fresh CT Scans of brain have not been performed while issuing disablement certificate but previous CT scans have been performed and there is a reference to it in the certificate dated 10.8.1997 issued by Dr. Kalpesh Shah. The contents of the certificate is reproduced as follows:

"Plain CT scans of brain have been performed.
Ventricular system appears slightly smaller in
size.

No midline shift

Patchy hyperdense lesion is seen in it.frontal
region

Very thin (Max. width-3 m.m.), hyperdense
collection is seen in it. parietal region, just
underneath the bone.

Posterior fossa structures appear normal

Bilateral scalp swelling noted.

OPINION: The CT findings show
Left frontal haemorrhagic confusion
Left parietal very thin subdural
haematoma".

On going through the said certificate, it clearly appears that there is medical opinion that the petitioner had suffered 19% permanent disablement. This shows that prima facie and the tentative decision was recorded by the tribunal. In that view of the matter, I am of the view that when there was a certificate issued by the competent Doctor and when the opinion has been supported by reasons, then the learned tribunal has committed jurisdictional error in holding that the petitioner has not suffered permanent partial disablement.

3. In the aforesaid view of the matter, this is a fit case wherein this Court should interfere in this revision. I am, therefore, of the view that there is prima facie case in favour of the petitioner that the

petitioner had suffered permanent disablement and, therefore, the order for compensation on 'no-fault liability' basis under section 140 of the Motor Vehicle Act has to follow.

This revision is accordingly allowed. The order passed by the tribunal is set aside and the respondent is directed to deposit an amount of Rs.25000/- with interest at 12% from the date of application before the tribunal. On such deposits, the tribunal shall pass appropriate order for disbursement and deposit in accordance with the requirement of the matter before the tribunal and in accordance with law based on the case law on account of the decisions of this Court as well as the Apex Court. Rule is made absolute accordingly. No order as to costs.

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msp.